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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 462.

LEO ZAMARONI,
Petitioner,
v.
JAY G. PHILPOTT,
District Director of Internal Revenue,
Respondent.

REPLY BRIEF FOR PETITIONER

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

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ARGUMENT.

The government's insistence on repeatedly misstating the issue in this matter and the nature of the action brought below constrains petitioner to file this reply to once more set the record straight. Under "Question Presented" in his Brief in Opposition (p. 2), the Solicitor wrongly describes this action as a "suit to enjoin respondent from assessing tax deficiencies and penalties. . . ." Again on page 8 of his brief, in attempting to distinguish cases relied on by petitioner, the Solicitor refers to the

instant action as "a suit to enjoin the District Director from **assessing** tax liabilities." Moreover, since this erroneous concept was advanced by the government both in the District Court and Seventh Circuit below and was each time carefully refuted by a simple reference to the complaint which is the subject of this controversy, one can only conclude that the present misstatements in the Solicitor's brief are studied and designed to prevent the granting of certiorari. If the "Question Presented" were really as stated by the government, this petitioner would never have troubled this Court. Such a Question Presented merits only speedy denial which both petitioner and respondent well know;[1] the main job for this Court is to determine for itself (and it can be done within a matter of minutes by inspection of the pleadings) whether petitioner's Question or respondent's fairly states the issue in this case. Once this is done, the grant or denial of this petition will follow almost from an accurate statement of the Question itself.

Petitioner (now for the **fourth** time in official briefs filed in the various stages of this lawsuit) would merely point out that this action was brought solely to enjoin respondent from using certain evidence. Nowhere in the complaint, including the prayer for relief, is there anything to suggest that an injunction against the assessment itself is sought. At no time during the existence of this action, from the time of filing of the original complaint to the present, has petitioner or his counsel ever indicated that anything more was sought other than a simple injunction to restrain the use of illegally seized evidence.

This distinction was clearly pointed out in the Petition for a Writ of Certiorari (p. 8), and it is inconceivable that the government could innocently continue to misconstrue

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[1] See Section 7421 (a) of the 1954 Internal Revenue Code, which clearly prohibits suits to enjoin the actual *assessment* of any tax.

the nature of this action. The only injunction sought here is to prohibit the use of certain evidence. No relief is asked relative to the assessment (or assessment procedure) itself. If petitioner prevails, respondent will still be perfectly free to proceed with his determination and assessment of tax deficiencies and penalties, without, however, use of the illegally seized evidence.

Petitioner submits that the simple language of the complaint exposes the fallacy in the government's brief. Once it is realized that this is merely a suit to restrain use of certain evidence, and not an action to enjoin an assessment itself, the arguments advanced in opposition to certiorari become inapplicable.

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